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FURTHER CORRIGENDA AND CONSEQUENTIAL AMENDMENTS

Document prepared by the International Bureau

1. The Annex to this document contains proposals to further amend Rules 43*bis*.1, 44.1 and 69.1 as adopted by the PCT Assembly on October 1, 2002, with effect from January 1, 2004 (see document PCT/A/31/10, Annex V).¹ These proposed amendments are in the nature of corrigenda or consequential amendments based on the amendments already adopted. Explanations are set out in the Annex in comments relating to the provisions concerned.

2. *The Working Group is invited to consider the proposals contained in the Annex to this document.*

[Annex follows]

¹ References in this document to “Articles” and “Rules” are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT (“the Regulations”), or to such provisions as proposed to be amended or added, as the case may be.

ANNEX

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:²

FURTHER CORRIGENDA AND CONSEQUENTIAL AMENDMENTS

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² Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 43bis

Written Opinion of the International Searching Authority

43bis.1 Written Opinion

(a) Subject to Rule 69.1(b-*bis*), the International Searching Authority shall, at the same time as it establishes the international search report [or the declaration referred to in Article 17\(2\)\(a\)](#), establish a written opinion as to:

(i) and (ii) [No change]

The written opinion shall also be accompanied by such other observations as these Regulations provide for.

[COMMENT: It is proposed to amend Rule 43bis.1(a) so as to clarify that a written opinion under Rule 43bis.1 is to be established by the International Searching Authority even in the case that no international search report is established in accordance with Article 17(2)(a) (see paragraph (b), below, which refers to Article 35(3)). Since there has been no international search, the scope of the report will necessarily be very limited. Usually the only substantive content will be an explanation under Rules 43bis.1(b) and 66.2(a)(i) or (vi) of why no opinion is given on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable. This procedure is already envisaged in the PCT International Search and Preliminary Examination Guidelines (see paragraph 9.40 of document PCT/GL/ISPE/1). It is also equivalent to the procedure which has long existed under Chapter II where, if any of the situations referred to in Article 34(4) exists or if no international search report has been established, a similarly limited written opinion or international preliminary examination report is established (see Box No. III of Forms PCT/IPEA/408 and 409 and paragraph 17.29 of document PCT/GL/ISPE/1).]

[Rule 43bis.1, continued]

(b) [No change] For the purposes of establishing the written opinion, Articles 33(2) to (6), 35(2) and 35(3) and Rules 43.4, 64, 65, 66.1(e), 66.7, 67, 70.2(b) and (d), 70.3, 70.4(ii), 70.5(a), 70.6 to 70.10, 70.12, 70.14 and 70.15(a) shall apply *mutatis mutandis*.

(c) [No change]

Rule 44

Transmittal of the International Search Report, Written Opinion, Etc.

44.1 *Copies of Report or Declaration and Written Opinion*

The International Searching Authority shall, on the same day, transmit one copy of the international search report [or of the declaration referred to in Article 17\(2\)\(a\)](#), and [one copy of the written opinion established under Rule 43bis.1](#), ~~or of the declaration referred to in Article 17(2)(a)~~, to the International Bureau and one copy to the applicant.

[COMMENT: It is proposed to amend Rule 44.1 so as to clarify that the International Searching Authority will transmit to the International Bureau and to the applicant either a copy of the international search report or of the declaration referred to Article 17(2)(a) (that no international search report will be established) and, in any case, a copy of the written opinion under Rule 43bis.1, noting that a written opinion under Rule 43bis.1 is to be established by the International Searching Authority even in the case that no international search report is established in accordance with Article 17(2)(a).]

44.2 and 44.3 [No change]

Rule 69

Start of and Time Limit for International Preliminary Examination

69.1 *Start of International Preliminary Examination*

(a) Subject to paragraphs (b) to (e), the International Preliminary Examining Authority shall start the international preliminary examination when it is in possession of all of the following:

- (i) [No change] the demand;
- (ii) [No change] the amount due (in full) for the handling fee and the preliminary examination fee, including, where applicable, the late payment fee under Rule 58*bis*.2; and
- (iii) either the international search report or the declaration by the International Searching Authority under Article 17(2)(a) that no international search report will be established. and the written opinion established under Rule 43*bis*.1 ~~or a notice of the declaration by the International Searching Authority under Article 17(2)(a) that no international search report will be established;~~

provided that the International Preliminary Examining Authority shall not start the international preliminary examination before the expiration of the applicable time limit under Rule 54*bis*.1(a) unless the applicant expressly requests an earlier start.

[Rule 69.1(a), continued]

[COMMENT: It is proposed to amend Rule 69.1 so as to clarify that the International Preliminary Examining Authority will receive either the international search report or a notice of the declaration referred to Article 17(2)(a) (that no international search report will be established) and, in any case, the written opinion established by the International Searching Authority under Rule 43*bis*.1, noting that a written opinion under Rule 43*bis*.1 is to be established by the International Searching Authority even in the case that no international search report is established in accordance with Article 17(2)(a).]

(b) to (e) [No change]

69.2 [No change]

[End of Annex and of document]